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IMPRISONMENT FOR DEBT CONSIDERED:

With reſpect to the

BAD POLICY, INHUMANITY,

AND

EVIL TENDENCY of that PRACTICE.

TRANSLATED FROM THE ITALIAN.

Non a Prætoris Edicto, ut plerique nunc, neque a XII Tabulis, ut Superiores, ſed penitus ex intimâ Philoſophiâ hauriendam juris diſciplinam, puto.

CICERO de Legib. Lib. i.

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MDCCLXXII.

THE TRANSLATOR's PREFACE.

AN apology will ſcarcely be thought neceſſary for giving this little treatiſe to the public in an Engliſh dreſs, as the ſubject of it ſeems ſo immediately intereſting to this country, whoſe laws (which for their mildneſs do it ſo much honour) are remarkably rigid with reſpect to Debtors.

In every ſyſtem of laws, ſome remains of ancient barbarity have ſtill

ſtill been preſerved, and their obſervance enforced from the too great veneration, which has always been had for antiquity. But it is not according to ancient uſage, but the maxims of philoſophy that we ought to frame our juriſprudence, as Cicero has well obſerved in the ſentence taken by my author from his book upon Laws, for the motto of his work.

The principles of right and wrong are immutable, and in all times muſt have been the ſame; but the laws, though to be equitable they muſt be founded on thoſe principles, being directed

to

to act upon men's manners which are ever changing, ought to have no greater ſtability than them.

Thus the practice of impriſoning inſolvent Debtors, which obtains at this day, is delivered down to us from times when the intercourſe between men was ſimple and inartificial; when the ſtream of commerce ran but in a few channels, and when a Debtor could hardly fail without being fraudulent. But on the other hand, in the age we live in, when the wants of mankind, multiplied by a refined luxury to an enormous degree, have opened freſh ſources

of

of commerce, and divided the ancient ſtream into an infinite variety of new branches, a Debtor may fail without being fraudulent: and perhaps whenever he becomes ſo, it will be found to have been owing to this impolitic and cruel practice.

Fraud, I ſay with my author, juſtly merits puniſhment; but let us not aggravate the diſtreſſes of the unfortunate by depriving them of liberty, and confound the innocent with the guilty, by inflicting on both alike *that*, the heavieſt of all puniſhments.

This

This practice has in reality owed its principal ſupport to a part of ſociety, whoſe intereſt it has always been to cheriſh the ſeeds of ſtrife and animoſity: I mean the profeſſors of the law, a body of men already ſwoln to a moſt tremendous ſize, and ſtill increaſing. Like a ſlow and indolent tumour, generated in a good habit, they have been diſregarded until they began to canker and deſtroy the body politic.

The greater part of theſe men, it is to be feared, have no other means of living than what is derived from the practice here decried. By applying themſelves

to the paſſions, ever alive, when money is the matter in diſpute, and by taking advantage of that eaſy credulity which always accompanies misfortune, they have perverted to a great evil thoſe laws, which have been held our beſt inheritance.

From the inventive genius of theſe men, have ſprung forth all thoſe fictions and devices through which the law is reduced to that ſtate of *glorious uncertainty*, ſo much their pride and boaſt. The lawyers invented, and the courts gave a ſanction to them, in conſideration of being admitted to a ſhare of the plunder.

How

How ſhocking is it to conſider the numbers conſtantly ſhut up in priſons; men before uſefully employed, by ſuch means loſt to ſociety, and left to implore the public benevolence! Still more ſhocking is it to reflect, that when the creditor, relenting perhaps, or perceiving no hopes of being paid, has forgiven the debt, the unhappy inſolvent, languiſhing for liberty now opening to his proſpect, ſhall be poſſibly detained to ſatisfy demands made upon him by the petty miniſters of juſtice.

It is devoutly to be wiſhed that this important matter will ſome

time or other be ſettled by the legiſlature, on ſuch a footing that the rights of humanity may be reſtored, and the numerous victims ſpared, which are daily offering up to the demons of avarice, malice, and chicane.

We live in an age, in which the fine arts are advancing to the ſummit of perfection. The progreſs of barbarity towards a ſtate of civilization, has always kept pace with their advancement, for the hand of the artiſt has rarely been known to inform the canvas and marble with breath and life, in times when the mind has been

been depreſſed by the cruel hand of tyranny.

At a time when ſtately edifices of ſplendid charity, and proud ſtructures dedicated to diſſipation and pleaſure, are every where riſing to our view, is it not ſurprizing that there ſhould be no fund for the relief of ſuch unhappy perſons as are confined for ſmall debts, or detained for diſcharge of fees? Such a charity would reſtore to their diſtreſſed families numbers of unhappy objects, now rendered uſeleſs to them and to ſociety; and a part of the money deſtined for the

purpoſes of charity, now idly ſquandered away in buildings of uſeleſs ſhew and coſtly magnificence, might be employed in this manner, to infinitely better purpoſe.

We, however, are left to ſeek humanity in the inhoſpitable regions of the North. Ruſſia, it ſeems, has already ſet the firſt example of aboliſhing this cruel practice; and heaven forbid, that the poliſhed nations of the ſouth of Europe ſhould diſdain to be taught what is due to human nature, by a people whom they ſtill affect to term barbarous. It is

to be hoped they will not, and I join in the words of my author, *mi giova così ſperare per non credere perduto queſto mio tenue lavoro, che qualunque egli ſia, è un reſultato della mia ſenſibilità verſo i miei ſimili.*

But ſome one of my readers may aſk me, who this benevolent author is? And indeed, had I not been inſenſibly led away by a ſubject which ſo nearly touched my love of humanity, I ſhould have before told him, that it is not certainly known, whether the following ſheets were written by the Marquis *Beccaria* or not. Whether he did or did not write them,

them, they may well be conſidered as a ſupplement to his work *de i delitti e delle pene*, which has been ſo well received here, under the title of "An Eſſay on Crimes and Puniſhments." In both the cauſe of humanity is pleaded with a noble enthuſiaſm, and to have laboured in ſo good a work is highly meritorious, and is to deſerve well of all mankind; for, however diſputable ſome may think that maxim to be, which aſſerts the *voice* of the people to be the voice of God, no one will ſurely deny that their *cauſe*, which is that of humanity, is the cauſe of God.

IMPRI-

IMPRISONMENT

FOR DEBT

CONSIDERED.

RICHES and poverty are neceſſary lots in political ſociety; to endeavour to bring about an equality of condition, would but tend to throw the body politic into a ſtate of lethargy, by impeding a due circulation. Should perſeverance in the acquiſition of wealth ceaſe to be animated by ſecurity in the poſſeſſion of it, genius would abate its induſtry, many uſeful diſcoveries would be loſt, new enquiries would no longer be proſecuted, and arts and ſciences

would not be communicated from one people to another.

It is of advantage to mankind in a ſtate of political ſociety, that gold and ſilver ſhould be eſteemed wealth, ſince this deluſion promotes the general good, by maintaining every member of it in mutual dependance. If every nation was compoſed merely of the cultivators of its ſoil, the ſuperfluous produce of the land muſt be left to periſh on the ſpot where it was produced; they, who were not employed in agriculture, would become uſeleſs to ſociety, as their purſuits would be circumſcribed within the narrow limits of natural wants, and commerce with all the benefits reſulting from it would be loſt to mankind; commerce, which conſidering nations as ſo many ſeparate families, ſtrives to include them within the pale of one ſociety.

The Rich and Poor are then neceſſary parts of political ſociety; the deluſive value ſet on gold and ſilver likewiſe is of uſe, and it becomes the intereſt of thoſe in whoſe hands the public authority is confided, to open every avenue for the purſuit of theſe deſireable metals, and to allow free liberty to every individual of employing them as he pleaſes. Privileges granted ſome, to the excluſion of all others, become ſo many acts of injuſtice to the reſt of the people. Every ſubject ought to appear alike in the eyes of the ſovereign. He may conſider Rich and Poor in the light in which diſtinction places them, but both ſhould alike be made to conform to the *General Will*; and the executive power, wherever placed, muſt narrowly watch over their conduct, or otherwiſe the Poor will be oppreſſed by the Rich.

Such oppreſſion is an evil in the nature of things irremediable, becauſe it ariſes from that paſſion in the human breaſt, which prompts men to act with a view to ſelf; but it is a diſgrace to humanity, and muſt ſhock every feeling mind, to reflect that there are Laws made to promote the gratification of ſo vile a paſſion; ſuch are thoſe in force againſt inſolvent Debtors.

A Poor man borrows money of his Rich neighbour, he promiſes payment on a day fixed, thinking himſelf certain of keeping his word, from the proſpect he has of receiving in the mean time, as much as will enable him to do it; his hopes are, however, fatally diſappointed, his reſources fail him, and he is ſhut up in a priſon for a Debt contracted *bonâ fide* with a fellow-citizen. I have never been able to comprehend, nor ever ſhall, why

why ſuch proceedings ſhould obtain the ſanction of the laws? And why this man who has been guilty of a breach of promiſe, rather from inability than want of inclination, ſhould be conſidered in the ſame light, with one who has taken from the public ſtock that portion of liberty, which he had depoſited there, and employed it to the prejudice of ſociety.

* *Qui non habet in ære, luat in corpore,* is a maxim founded in cruelty and ſhocking to humanity. The Romans, from whom we borrow our juriſprudence, were conquerors; if we conſider them as legiſlators, we ſhould only receive their general principles of right and wrong, for their applications of them to particular caſes

* If the Debtor fails to diſcharge his obligation, let his body ſuffer for it.

caſes were often erroneous, and they ſeem to have been influenced, rather by a ſpirit of ferocity, than of humanity.

To prove the truth of this aſſertion, we need only conſider their laws reſpecting *paternal authority* and *ſlavery*. A father might ſell his children, and had the power of life and death over them. A maſter had the ſame right over his ſlaves, and they were conſidered as *things*, and not as perſons. Is it poſſible to imagine any thing more oppoſite to humanity and the natural rights of mankind?

In like manner their laws inclined to favour Creditors, in prejudice of Debtors and their heirs *.

When

* The Romans had a law whereby Creditors had a right to claim their Debtors as ſlaves; but the Creditors uſing this privilege with too much rigour,

When a Debtor died, whoſe lawful heir refuſed the ſucceſſion on account of his dying in debt, it was a reproach to the memory of the deceaſed. If a ſlave was appointed heir, he had not the liberty of refuſing, becauſe he was *hæres*

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rigour, it occaſioned ſeveral revolts of the plebeians, who demanded the abolition of this law. Valerius, ſon of the great Publicola, together with Servilius, maintained the cauſe of the people againſt Appius Claudius, the avowed partizan of the patricians. Although this inhuman law was aboliſhed in conſequence of the firſt revolt, yet the powerful influence of the patricians revived it ſome time after; but Veturius being reduced to ſlavery by Plotius, for a Debt contracted by performing the funeral rites of Titus Veturius his father, it brought about the laſt revolt of the people, and their retreat to Janiculum. The ſenate, intimidated by that ſtep, was forced to name a dictator, and the choice fortunately falling upon Quintus Hortenſius, he was no ſooner inveſted with the ſupreme authority, than he aboliſhed this oppreſſive law.

hæres neceſſarius, heir through neceſſity: indeed he gained his liberty by it, but it was at the price of being peſtered with clamorous creditors.

When the deceaſed left children behind him, they were of neceſſity his heirs, and if in the end they were ſuffered to decline the ſucceſſion, it was not in conſequence of any proviſion the law had made, but of the prætor's edict. The creditor moreover had power of arreſting the debtor's dead body.

Theſe laws, which cannot but appear unjuſt, to men not totally loſt to every ſentiment of humanity, are handed down to us and mixed with ours; and ſo ſtrong is the force of prejudice on the ſide of antiquity, that there have not been wanting men who have written favourably of them.

It is of very bad conſequence to ſuppoſe, that laws made under particular circumſtances, and in particular countries, may be admitted at other places and in other times, and that when once admitted they ought to be perpetual and invariable. Times and manners are ever changing, and laws ſhould change with them. The great Mr. Locke was ſo well convinced of this truth, that when he formed a ſyſtem of laws for Carolina, he ordered them to be obſerved only during the ſpace of a century. Thus, I think, all laws might be made to continue for a certain time, and renewed at the determination of that period, according as they had been found uſeful. There would then be no neceſſity for repealing laws, the people would have fewer complaints againſt them, and would hold them in greater reſpect, as

they ſtood in no need of explanation or amendment.

In Tuſcany a very cruel law is ſtill in force againſt Inſolvents: if a Debtor there abſconds, the law looks upon him in the light of a fraudulent bankrupt, and beſides the puniſhment to which he is liable, his ſons and male deſcendents born at the time of the bankruptcy, become bound in perſon and eſtate for payment of his debts, without power of giving up the effects, or renouncing the inheritance: it thereby often happens that the male iſſue of this unfortunate Debtor, has the opprobrious name of bankrupt entailed upon it forever.

But it may be ſuppoſed that a man withdraws himſelf, from the natural love of liberty, and dread of being deprived of it, ſo inherent in the human breaſt, why

why then from the act alone of abſenting himſelf, ſhould it be concluded that he meant to defraud his Creditors? And why ſhould the poſterity of that man, no way concerned in his tranſactions, be made to ſuffer for his failure? Such a law might be thought convenient in a ſtate which owed its proſperity to commerce, and where the wealth derived from that ſource to the family of the reigning prince, (which, from a private ſtation, had raiſed itſelf to the throne) was an obſtacle to the ambition of other citizens; but theſe reaſons having long ſince ceaſed, peace and good order having ſucceeded to turbulence and ſedition, and government being ſettled on a ſolid foundation, that law ſhould no longer exiſt, and for the honour of ſo illuſtrious a family, every trace of it ought to be done away.

Yet ſo it is, that notwithſtanding two centuries have paſſed ſince this law was made, Creditors ſtill exact the obſervance of it; and in many caſes, the judges themſelves have not ventured to break through an ordinance, now grown obſolete.

The Debtor or Bankrupt who has acted fraudulently, is moſt undoubtedly deſerving of puniſhment; but the fraud ought firſt to be clearly proved, and in no caſe ſhould be preſumed. He will then be puniſhed not becauſe he is a Debtor, but as he is a criminal; for fraud being a conſequence of words and actions in their nature falſe, and tending to deceive, it follows, that he who is capable of making uſe of ſuch means, is looked upon as dangerous to ſociety, and conſidered in the light of a robber. But on the other hand, he who has contracted

a debt

a debt *bonâ fide* ought to enjoy his perſonal liberty, and ſhould not be a priſoner at the pleaſure of any individual.

The ſocial compact, or union of men in a ſtate of civil ſociety, had for its end the benefit of the whole. A means of obtaining that end, was to divide their common advantages, and reſerve to each member a diſtinct property in them; but then this right of property was to extend no further than ſuch portion, as was neceſſary for the preſervation of each individual. Every member derives from nature a right to an equal ſhare, and if the ſociety, at any time, grants him a larger portion, it is done with intent to ſecure it to him. Now in order to afford ſuch ſecurity, there was need of a force more than equal to that of any individual, and this is no other than the ſum of the force of every member. Each member contributes

tributes towards the conſtitution and ſupport of this force by his ingenuity, ſkill, and induſtry; and the public authority can have no right to allow a Creditor to take a portion of this force, and employ it to the prejudice of ſociety.

Some may, perhaps, treat this poſition as repugnant to truth, and a metaphyſical ſubtilty; but I will maintain it to be founded on reaſon and juſtice.

The happineſs of a people depends in reality upon the prudent adminiſtration of public œconomy. Modern writers on this ſubject, divide every people into three diſtinct claſſes; the firſt conſiſting of *Proprietors* or *Landlords*; the ſecond called *productive*, becauſe compoſed of Huſbandmen, and Manufacturers; and the third denominated *barren*, as not being employed like the ſecond in the produce of the country. Theſe three claſſes form the whole object of public œconomy.

Should any ſingle claſs of theſe three become inactive, its inaction will be communicated to the other two. If the landlord is not able to furniſh the neceſſary expence for cultivation, the labour of the huſbandman is proportionably leſſened, and the annual produce of the ſoil decreaſed; manufactures will then become leſs profitable to the ſtate, and the manufacturers themſelves obliged to quit the country.

The materials for ſeveral manufactures are furniſhed by the ſoil, and if its produce decreaſes, the manufacturer muſt be without employment.

If twenty hands are required to cultivate a ſpot, in order to receive the greateſt poſſible produce, and a leſs number be employed, the proprietor loſes that benefit, which he might have derived from it.

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The proprietor then complains, that the profits are not anſwerable to the expence; the huſbandman laments that his labour is not ſufficient for his ſupport; the manufacturer grieves to find a decreaſing demand for the produce of his induſtry; and the ſtate is weakened, becauſe the ſource of its wealth is dried up.

Such will be the conſequence of too ſevere laws againſt debtors.

If an individual of either of theſe three claſſes, is thrown into a gaol for Debt, his labour is ſuſpended ſo long as ſhall ſeem good to his Creditor; the ſtate loſes the profit it ought to have received from his induſtry, and he has it leſs in his power to diſcharge his obligation.

Here it may be perhaps objected, that the labour of one man loſt to the

ſtate is a mere trifle, and not to be eſtimated: to this I anſwer, that however little it may be, it ought to be brought to the account. Public œconomy depends upon calculation, and no calculation can be true, wherein the ſmalleſt fractional part has not been conſidered.

It muſt likewiſe be obſerved, that the Debtor thrown into a gaol, and thereby deprived of the means of procuring his ſubſiſtence, becomes, perhaps with the addition of a family, a burthen upon the public: depending upon charity for their ſupport they contract habits of idleneſs; thus the purpoſes of charity are deſtroyed, which ſhould ever be directed towards reducing the number of claimants upon it, and that number would be certainly leſs, if Debtors were to enjoy their perſonal liberty.

If I commit a crime I prejudice ſociety, inaſmuch as I withdraw myſelf from the authority of the *general will*, and ſuch puniſhment is deſervedly inflicted as ſhall bring on ſubmiſſion to it; but if I demean myſelf in every reſpect as a good ſubject, no one can cauſe me to be puniſhed, without deſtroying that equality which is the baſis of ſociety. Impriſonment is a grievous puniſhment, becauſe it deprives individuals of that portion of liberty, which every man reſerved to himſelf, when he paſſed from a ſtate of nature into that of ſociety. If a fellow-citizen is allowed to deprive me of that portion, the political ſyſtem is overturned, for the advantages will fall on one ſide, whilſt the inconveniences remain on the other.

But how has he prejudiced ſociety and deſerved puniſhment, who has only contracted a ſimple Debt? On the contrary,

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he has benefited it, by reſtoring to the circulation that caſh, which his Creditor had taken from it. But, it will be ſaid, has not the Debtor invaded that property, which the public authority is bound to protect? Certainly not; the Creditor delivered over to the Debtor, of his own free will, what he had a right to beſtow as he pleaſed.

It will not in the leaſt invalidate the force of this argument, to ſay, that impriſonment in this caſe, is not a puniſhment inflicted by a private perſon; but by the adminiſtrators of public juſtice: for it muſt be eſteemed his act, ſince it is done at his requiſition. A magiſtrate may confine a perſon guilty of a crime, but can have no ſuch power over one, who is accuſed of none; though it would be otherwiſe, ſhould that perſon diſobey his lawful commands, becauſe diſobe-

dience to them is a crime. Now, ſuppoſe the magiſtrate was to order the Debtor to ſatisfy the Creditor's demand within ſuch a time, and the Debtor fails to comply through inability, does he in that caſe merit the puniſhment of diſobedience? He certainly does not, becauſe to conſtitute diſobedience, there muſt be will and ability; now the will is at his command, but ability depends upon a variety of circumſtances, not always within his power, and without ability will avails him nothing: if he had the ability and not the will, he certainly merits puniſhment, becauſe he muſt be looked upon as guilty of breach of faith.

It muſt be further obſerved, that in framing ſocieties, every member pledges his perſon to the whole body, but to no one in particular; and though this obligation is of a very ancient date, yet from its nature

nature it is renewed at the birth of every individual, ſuch renewal being neceſſary for the continuance and preſervation of ſociety and order. Thence it follows, that no member can bind himſelf to another, without deſtroying the ſocial compact, which has linked every one in a chain of mutual reciprocation.

Beſides, it is not the power which the Creditor has over the perſon of the Debtor, that is the motive of his confidence; but the opinion he entertains of the ſafety of his loan. To prove the truth of this, let any man but aſk himſelf, what induces him to lend his money to another? I do not intend hereby to exclude the motives of pity and compaſſion, as I mean only to draw a general rule, from ſuch caſes as moſt commonly happen.

Neither is it the fear of a priſon, that induces a Debtor to diſcharge his obliga-

tion. An external impulſe may be uſeful, when internal ones are wanting; but if theſe exiſt, that loſes its uſe, as becoming ſuperfluous. Internals act continually, but the action of externals is remote, and inſtantaneous. A ſlight examination into human nature, and our own breaſts, will convince us of the truth of this. He who borrows money brings an obligation upon himſelf, which in a manner renders him dependant on his Creditor: dependance being inconſiſtent with that love of freedom, implanted in the human mind, he feels a continual excitement to deliver himſelf. Hence ariſes that inward ſenſation of uneaſineſs, oppreſſing him like a load, whilſt in the preſence of his Creditor, when he feels the will, and has not the ability of ſatiſfying his demand.

If impriſoning the Debtor were the means of recovering the debt, it would be

for

for the public advantage to continue ſuch a meaſure; but as it tends only to make the body ſuffer, as well as the mind, I will always maintain it to be contrary to good policy, and the natural rights of mankind.

Some examples of Creditors, paid in conſequence of impriſoning their Debtors, make nothing againſt my argument, which reſts upon the inhumanity of reducing a family to beggary by ſuch cruel meaſures. A man is thrown into a priſon, his afflicted wife ſells every thing ſhe can call her own to the very bed ſhe lies on; ſhe recovers his liberty, and they, with an helpleſs family of children, are left to periſh for want of common neceſſaries. Let the Creditor be carried thither, and, however ſteeled againſt compaſſion, behold with dry eyes, if he can, this wretched family ſtarving to add to his ſuperfluity.

I might dwell ſtill longer on this affecting picture, and heighten the diſtreſs yet more, by repreſenting a wretch who has nothing left for ſupport, but a morſel of bread; and his mercileſs Creditor, who wallows in riches, ſnatching it from him, whilſt every body cries out againſt his barbarity; but as originals are more ſtriking than copies, and as ſuch originals are but too common, I ſhall deſiſt from the attempt.

All men are by nature ſuſceptible of ſentiments of compaſſion. This ſenſibility is increaſed or diminiſhed, in proportion to the proximity or diſtance of the object. He who is neareſt to it eaſily places himſelf in the ſame ſituation, and feels all the miſery of it, as if he were actually there; whilſt one who is farther removed, conſidering only the intermediate diſtance, cannot ſo eaſily view him-

ſelf under the like circumſtances. Hence the feelings of the rich are leſs ſtrong than thoſe of the poor, and conſequently they are leſs compaſſionate. Thus when a rich man finds himſelf affected by the ſight of a diſtreſſed perſon, he endeavours to get rid of the troubleſome ſenſation by avoiding him, or by calling his failings to remembrance. He recollects that he was extravagant, or idle; he conſiders him as chuſing rather to beg than work; concluding that he ſuffers deſervedly, becauſe he has brought his misfortunes upon himſelf.

I do not deny, but there are ſome who may merit ſuch reproaches as theſe; their number is, however, inconſiderable, and they muſt not be left to ſtarve. In all well-regulated governments, the diſſolute and idle are ſubject to the controul of the civil magiſtrate, and common beggars

confined in work-houſes, where they are forced to become uſeful to ſociety and to themſelves, the ſtate never inquiring into the occaſion of their diſtreſs, but acting like a common father, relieves the miſerable whenever it finds them.

Human life carries in its train ſuch a variety of calamities, that it is often difficult, if not impoſſible, to foreſee and guard againſt misfortune; on this account the diſtreſſed are entitled to our compaſſion; beſides, humanity claims aſſiſtance for them, as every man has a natural right to ſupport.

Creditors make but a ſmall part of any people; they lend only what they make no uſe of, and to inveſt them with the power of impriſonment, is as contrary to juſtice as it is to humanity, principles to which all laws ought to be reconciled.

The

The tranſition from humanity to barbarity is eaſy. An object frequently beheld is rendered familiar to us, and we become leſs affected by its ſight; our feelings are then hardened, and if the laws do not provide a remedy, the greateſt part of the people will be oppreſſed by the leaſt.

The wiſe Solon foreſaw this evil, for in the laws which he delivered to the Athenians, he forbade impriſonment for ſimple debts; but unfortunately for mankind this example has not been imitated, though there is reaſon to hope, in ſo enlightened an age, this ſpecies of legal barbarity may be removed *.

There is one ſovereign that has adverted to this important object, a ſovereign

* Formerly in Florence, a perſon who owed the ſmalleſt ſum, was liable to be impriſoned for it, but a few years ago the ſum was limited to two crowns. This was one ſtep taken in the cauſe of humanity.

whoſe nobleneſs of mind, and wiſe adminiſtration of government, render the people happy who are under it; I mean Catherine, Empreſs of Ruſſia. In the inſtructions given by her, to the perſon fixed upon to form a new code of laws, ſhe points out this law of Solon, and recommends its application to ſimple debts contracted independant of trade, at the ſame time, remarking upon the cruelty of impriſonment for debt. Thus has ſhe declared herſelf a champion in the cauſe of humanity, and merits on that account the bleſſings of all mankind. Would to heaven, that every other ſovereign may do as much to deſerve the glorious title of benefactor of the human race! The preſent reigning princes of Europe, may be conſidered as ſo many parents, who treat their ſubjects as their children, and who join to ſkill in the arts of governing thoſe virtues, which preſerve an empire in the

hearts

hearts of their people: they have reformed many abuſes that had crept into ſociety, and are ſtill endeavouring to reform more *.

The cloud of ancient barbarity which hitherto hung over the ſeveral nations, begins by degrees to diſſolve away; and if we may predicate of futurity from the paſt, we may conclude that it will in a ſhort time intirely diſappear. Reformation is ſtill wanting in the practice of impriſonment for debt, and this evil will no doubt be reformed, becauſe it is a reflection on humanity: at leaſt I pleaſe myſelf with the hopes that it will, and that this little labour, the effect of ſenſibility

* The rendering void all gifts in *mort-main*, and the opening a trade in corn, are proofs that the true intereſts of mankind begin to be generally known. Such laws do honour to the ſovereigns that eſtabliſh them, as they are objects worthy the attention of a patriotic prince, and a wiſe miniſter.

ſibility for the ſufferings of my fellow-creatures, ſhall not have been in vain.

I perceive that I ſhall have numbers exclaiming againſt me, as if by pleading in behalf of Debtors, I ſhould ruin public faith; but I would aſk them if they think public faith can be ſupported without juſtice and humanity? If they reply in the affirmative, I muſt tell them that a ſtate of civil ſociety is not for their purpoſe, and that they ſhould make their abode amongſt the ſavages of the *Marian Iſlands*, who live in continual jealouſy of each other, and who have not the leaſt idea of what is meant by juſtice and humanity: but if they are of the contrary opinion, my juſtification is already made. Indeed, I ſhould injure public faith, if I aſſerted that Debtors ought not to be made to ſatisfy their Creditors; but heaven forbid, that I ſhould be the author of ſuch

abominable

abominable doctrine. Execution of the Goods and Effects of Debtors ought ſtill to be practiſed, and they ſhould be ſold or aſſigned over for diſcharge of Debts; reſerving however, if moveables, ſuch as it may be abſolutely neceſſary for them to have, and if they are lands, or immoveables which produce more than ſufficient for the Debtor's ſubſiſtence, ſuch ſurplus ſhould be paid to the Creditors.

In caſes where eſtates are aſſigned over to truſtees, a reſerve is made for the neceſſary ſubſiſtence of the Debtor; why ſhould it not likewiſe take place where there are moveable effects, equally under the public protection? I know that by the public authority, to prevent injury to heirs, the former are unalienable, and not liable for the engagements of the preſent poſſeſſor; but I do not at the ſame time admit, that Debtors ſhould be allowed

ſubſiſtence in the former caſe only, and not the latter; both are portions of the public fund or capital, occupied by anticipation, or granted at the eſtabliſhment of civil ſociety for that ſupport, to which every individual has a natural right. It is impoſſible for a man to give up this right, becauſe ſuch ſurrender would bring ruin upon him, which every one is by nature prompted to avoid. But, ſays one, were that the caſe, a Creditor would not be paid in a long time. He might not: but then, I anſwer, it will be better for a Creditor to ſupport the Debtor than to ſuffer him to fall a ſacrifice to his own avarice. In the one caſe the Debtor's eſtate may happen to be increaſed by inheritance, legacies, or his own prudent management; in the other, all is at once loſt, and the ſtate is beſides a ſufferer.

The regulation laid down in the chapter intitled *Odoardus*, which, reſerving a portion

portion for relieving the neceſſities of the Debtor, gives the remainder to the Creditor, is juſt, and exhibits a ſpecimen of juriſprudence dictated by ſound philoſophy, were it not that too much regard is therein had for rank, a diſtinction not to be conſidered when the rights of nature, to which all men have an equal claim, are in queſtion. The lawyers who have made this chapter include other degrees of men beſides clergy, have not rightly attended to firſt principles, and ſeem to have regarded difference of quality more than the perſonal rights of mankind. It is contrary to juſtice and humanity to allow neceſſary ſubſiſtence to ſome, and not to others who have an equal claim to it: it is contrary to juſtice, becauſe it deprives an individual of his right to ſupport; and it is contrary to humanity as it ſubſtitutes cruelty, which cuts the knot

of ſociety, in the place of mercy, which ties it faſt.

But ſome advocate on the ſide of Creditors, will tell me, that if the fear of a gaol be removed, if execution of the Debtor's body be not permitted, and if he is allowed his neceſſary ſupport, credit would be at an end, and they who were in neceſſity would not know where to ſupply their wants. But he that can make uſe of ſuch an argument, is little acquainted with mankind, and a careleſs obſerver of their actions. It is natural to men to ſet no bounds to their deſires, and of all their deſires that of acquiring wealth is the ſtrongeſt. A way to accumulate wealth is to lend money, which if it ſometimes fails of the end, it ſucceeds often enough to encourage men to purſue it. Facts confirm this obſervation. A part of every people is exempted from perſonal

perſonal impriſonment for debt, and when their eſtates are ſeized for the benefit of their Creditors, they have a right to maintenance out of them; yet theſe people find credit, nay often run deepeſt in debt. No ſooner was mankind united in a ſtate of ſociety, than there aroſe a number of relations which had no exiſtence before, though all neceſſary, becauſe derived from the nature of ſociety itſelf, which placed men in ſuch ſituations as to ſtand in need of each other's aſſiſtance. Now man as a rational creature is under a neceſſity, more or leſs, of practiſing the ſocial virtues for his own advantage; to reſtore men therefore to their natural rights of ſupport and ſubſiſtence, and to reinſtate them in the poſſeſſion of that freedom, which they reſerved to themſelves on entering into ſociety, is not an act of tyranny, but of juſtice and humanity.

It muſt moreover be obſerved, that the laws againſt Debtors, as they ſtand at preſent, ſerve only to raiſe up animoſity betwixt families, the unavoidable conſequence of harſh and rigorous proceedings. Men of wiſdom now employ themſelves univerſally in the improvement of policy and the promotion of the moral virtues; but they will fail in their good intentions, unleſs they ſtrive to deſtroy the ſeeds of ſtrife and enmity amongſt mankind; and when once that is effected, ſociety will be more firmly eſtabliſhed, and men's manners rendered more mild and gentle. Deprive Creditors of the power they now exerciſe over the body of their Debtor; aſſure to the latter his right to neceſſary ſubſiſtence, and the ſtate will ſoon perceive the benefit of ſuch a meaſure. The ſource of animoſity being then dried up, compaſſion will take root; which being placed in its proper ſituation, will ſpread

and

and expand itſelf until it embraces the whole extent of human affairs.

Unfortunately for mankind, there are but a ſmall number of poſitive laws, which have for their object the general good or advantage of the greater part of the people, becauſe they were made in ages of ignorance, or in times of anarchy and confuſion, when ſound policy was little known or attended to. Under ſuch circumſtances many local laws were made, which may be compared to the prætor's edicts of the old Roman law, becauſe intended to explain, amend, or enforce thoſe in being. Theſe ordinances are a mixture of the laws of Rome with thoſe of the barbarous nations. The incurſions of the northern nations into the ſouthern parts of Europe, have neceſſarily wrought a change in their manners and cuſtoms; ſo that to form a juſt idea of the character

of any nation, we ſhould examine their laws, for therein we ſhall find depicted (as it were in *chiaro-obſcuro)* the manners of the people, and the genius of their legiſlators.

It is certain the laws againſt inſolvent Debtors, were made in times when the arts of governing were not well underſtood. The legiſlator's mind employed upon trifles, was incapable of comprehending nobler objects.

A man muſt be deſtroyed in every inſtance where a Debtor was likely to be fraudulent. This is as if a ſurgeon, in order to prevent the conſequence of a mortification, ſhould cut off his patient's limb, though no ſymptoms of an approaching gangrene appeared. I do not ſay that our laws are equally as abſurd as ſuch practice would be, but they ſeem to be founded on principles nearly ſimilar.

We

We live in an age that is fertile in projects. New ones are daily propoſed for the improvement of the political and œconomical ſyſtems; in very few of theſe, however, have the calls of humanity been attended to, and they ſeem rather calculated to make public advantage ſubſervient to private intereſt.

Some indeed, whoſe minds were tinctured with true philoſophy, have raiſed their voices in pleading the cauſe of humanity; but it is only by accident, if they have been at all heard, becauſe the voice of truth is ſeldom ſuffered to reach the thrones of princes.

When rank and fortune are no longer conſidered as diſtinctions, to which peculiar privileges ought to be annexed, and when men are eſteemed according to the virtues and faculties of the mind, we ſhall ſee a ſyſtem of laws formed to promote the general good.

Laws which favour Creditors are of general hurt, and benefit only a few. Juſtice forbids that one man ſhould have a benefit conferred upon him by the injury of another.

It now remains only for me to addreſs myſelf to the juſtice and mercy of thoſe who govern: happy if the cries of humanity ſhall approach their thrones, convinced as I am, that from their paternal tenderneſs for their people, we ſhall ſee a change in the preſent ſyſtems of legiſlation for the benefit of us, and of our poſterity.

FINIS.